

## 29. Family/Medical Leave

In accordance with The Family and Medical Leave Act of 1993, effective August 5, 1993, it shall be the policy of the Nebraska Supreme Court to allow eligible employees, as defined herein, to take up to 12 weeks of paid or unpaid, job-protected leave (hereinafter family leave) each year for family and medical reasons as specified below. Accumulated sick leave and compensatory time will be required to be used before going on an unpaid leave status. Employees may also choose to use vacation leave after their sick leave is exhausted before going on an unpaid leave status. Total paid and unpaid leave time taken for family leave is limited to 12 weeks within a 12-month period, starting with the date the employee first uses family leave.

Sick leave absences due to a serious health condition of the employee or immediate family member will be counted toward the employee's 12-week-per-year family leave allotment. Employees may use sick leave beyond the 12-week family leave limitation for appropriate sick leave reasons with proper certification from a health care provider.

For purposes of this family leave policy, an "eligible" employee shall mean an employee who has at least 12 months of service and has worked at least 1,250 hours in the 12-month period preceding the start of the leave.

"Job-protected" leave shall mean that upon return from family leave, the employee shall be returned to his or her original position, or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment. However, an employee's "service date" (the date used to determine amounts of vacation and sick leave) shall be adjusted when an unpaid absence due to family leave exceeds 14 consecutive calendar days.

An eligible employee shall be entitled to family leave and will be required to use family leave for one or more of the following reasons:

1. the birth of a child of the employee;
2. the adoption of a child or placement of a foster care child with the employee;
3. in order to care for a member of the employee's immediate family (defined as spouse, child, or parent) who has a serious health condition; or
4. a serious health condition of the employee that makes the employee unable to perform his or her job.

An employee must provide at least 30 days' notice to the Administrative Office before family leave is to begin if the need for such leave is foreseeable. Where the need for such leave is not foreseeable, notice must be given as soon as possible and practical. Employees are also required to inform their supervisor of the need for family/medical leave as soon as possible.

The term "serious health condition" means an illness, injury, impairment, or physical mental condition that involves (a) inpatient care in a hospital, hospice, or residential medical care facility, or (b) continuing treatment by a health care provider.

A request for family leave based on the serious health condition of the employee or his or her spouse, child, or parent must be supported by a medical certificate issued by the health care provider of the employee or the employee's family member. The medical certification must include the following information:

1. The date on which the serious health condition commenced and the probable duration of the condition; and
2. The diagnosis of the serious health condition; and
3. A statement containing specific information explaining either:
  - a. why the employee is needed to care for the child, spouse, or parent; or,
  - b. why the employee is unable to perform the functions of his or her job.
4. If the leave is to be intermittent, a statement containing specific information concerning planned medical treatments, including the expected dates and the duration of such treatments.

In addition, upon the employee's return to work after his or her own serious health condition, the employee shall provide the health care provider's "fitness-for-duty" certification only if the absence was due to a job related injury or illness.

If the Administrative Office questions the adequacy of medical certifications referred to above, a second opinion may be required at the Administrative Office's expense, by a health care provider designated by the Administrative Office. If that second opinion differs from the first, a third opinion may be required, at the Administrative Office's expense. The third health care provider must be mutually agreed upon, and the results of the third opinion shall be final and binding.

Records and documents relating to medical certifications, recertification or medical histories of employees or employees' family members, shall be maintained in separate file/records in the Administrative Office and be treated as confidential medical records. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations.

For employees who have accumulated sick leave, the use of family leave will be concurrent with the use of accumulated sick leave when the reason for leave qualifies under the sick leave provision of the Nebraska Supreme Court Personnel Policies and Procedures. An employee may elect to substitute accrued vacation leave for all or part of the unpaid family leave. Nothing in this family leave policy allows an employee to substitute paid sick leave in any situation where the Nebraska Supreme Court Personnel Rules would not normally allow for such paid leave. Based on information provided by the supervisor and the employee, the Administrative Office shall be responsible for designating paid leave as family leave.

The Administrative Office may limit the total paid and unpaid leave which has been designated as family leave to 12 weeks in any 12-month period, beginning with the date the employee begins his or her family leave. Family leave is not cumulative.

Where a Nebraska Supreme Court employee has a spouse working for the court system or a state agency, the Administrative Office, at its discretion, may limit family leave to a

combined total of 12 weeks of family leave if such leave is taken for the birth or adoption of a child or placement of a foster child with the employee and his or her spouse.

Family leave may be taken intermittently, after proper notice and medical certification, whenever it is medically necessary to care for a spouse, child, or parent, or when an employee, because of his or her own serious medical condition, is unable to perform the functions of the job. If the need for intermittent leave is foreseeable based on planned medical treatment, the employee is responsible for scheduling the treatment, subject to the approval of the health care provider, in a manner that does not unduly interrupt the employer's operations. When intermittent leave is requested, the employer may require the employee to transfer temporarily to an alternative job, with equivalent pay and benefits, which will better accommodate recurring periods of leave than does the employee's regular position.

Employer health insurance contributions shall continue during an employee's unpaid family leave whenever such insurance was provided before the leave was taken. Employer contributions shall be computed as if the employee had continued to work his or her regular schedule. If the health insurance plan requires employee co-payments, an employee on unpaid family leave must continue to make insurance premium payments to maintain the insurance coverage.

*Amended 7-16-03; amended 7-9-15.*

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